

MEMORANDUM

To: Board of Regents
From: Board Office
Subject: Proposed Revisions to Professional and Scientific Grievance Policy
Date: January 7, 2002

Recommended Action:

Approve the proposed revisions to the University of Iowa Professional and Scientific Grievance Policy.

**Executive
Summary**

The P&S Grievance Policy applies only to those P&S employees at the University of Iowa not covered by a collective bargaining agreement. The proposed revisions (Attachment A) are more procedural than substantive and include the following:


- Clarifies who is eligible to use the grievance procedure.
- Clarifies of issues subject to advisory arbitration under the policy.
- Clarifies of the steps of the grievance process and adds the option for a mediated settlement.
- Expands the referral sources for selecting arbitrators.
- Limits the issue presented at arbitration to the issues presented at Step 3 of the grievance process.
- Requires that the arbitration report be issued within 30 days of the presentation of closing arguments. Previously, this had been 60 days.

Background

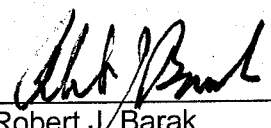
- The grievance policy was last revised in July 1999.
- The University's central Human Resources staff working in cooperation with the Office of the General Counsel and Staff Council representatives developed the proposed revisions.

**Approval
Requested**

Approval of the proposed revisions is recommended.


Marcia R. Brunson

Approved: _____


Robert J. Barak

28.4 GRIEVANCE PROCEDURES FOR PROFESSIONAL AND SCIENTIFIC PERSONNEL.

(Regents amended 6/19/91; amended 7/1/99)

b.a. Purpose. This procedure has been established to ~~promote the harmonious and just resolution of disputes which may arise between the University (including individual departments and supervisors) and its professional and scientific staff members. The procedure is intended to be fair and usable and to encourage settlement of disputes at the earliest possible stage. It is also intended~~ **provide a formal process to resolve internal qualifying** disputes without retaliation against the staff member or members. ~~utilizing the procedure. (If a staff member prefers to use an~~ **alternative** ~~informal dispute resolution mechanism, please refer to Section _____ describing "UI Conflict Management Resources for Staff.") relief may be sought through the University Ombudsperson and, where appropriate, the Office of Affirmative Action.~~

a.b. Definitions. As used in this policy, ~~each of the following words has the indicated meaning:~~

- (1) "Administrator" means the person or persons designated by the President to perform the functions assigned by this policy to the administrator. (At the present time, the duties of the administrator are assigned to the Associate Vice President/Director of Human Resources, **or his/her designee.**)
- (2) "Hearing officer" means the person selected as provided in paragraph i of this policy.
- (3) "Reviewing officer" means the Vice President for Finance and University Services, except that in cases in which the grievant holds a position in the Division of Finance and University Services, the reviewing officer will be the Provost.
- (4) "**Covered** staff member" means a non-organized **employee with career status** holding an appointment in a professional and scientific classification. A listing of **Professional and Scientific** classifications is obtainable from the Associate Vice President/Director of Human Resources **available on the web at:** <http://www.uiowa.edu/~hrpersvc/classcomp/psdesc/index.html>.
- (5) "Grievance" is defined as an allegation or complaint involving a perceived harm or injury and consistent with the scope of the policy outlined below.

c. Scope of Policy. Except as provided in subparagraph c(46) below, this policy establishes procedures which a **covered** staff member, as defined in paragraph **b** a—above, must follow in seeking resolution of a grievance concerning administrative action or non-action relating to the staff member which:

- (1) ~~for any covered staff member,~~ involves improper discrimination prohibited by the Constitution, statute, or University policy (such as the University policy on Human Rights), **however, issues of discrimination reserved for the jurisdiction of the Iowa Civil Rights commission, may only be processed through Step 3 of this procedure;**
- (2) ~~for any covered staff member,~~ involves the wrongful interpretation or application of established University, collegiate, and departmental policies governing terms and condition of employment;
- (3) ~~(2) or any covered staff member,~~ results in disciplinary action, including written reprimand, suspension **discipline**, demotion, or dismissal, ~~based on misconduct, for reasons unrelated to job performance or job-related conduct; or~~
- (4) ~~for a staff member holding career status, results in disciplinary action, including written reprimand, suspension, demotion, or dismissal, based on misconduct, when the action is based on an allegation of lack of satisfactory performance or of University-related misconduct;~~
- (5 4) for a staff member in term status, results in termination before the end of the staff member's term of appointment, when the action is based on allegation of lack of satisfactory **unsatisfactory** performance or on University-related misconduct.
- (5) ~~Areas of complaint as defined under the University's policy on human rights, including the policy on sexual harassment and consensual relations, may be brought under the procedures provided in that policy. Other matters not involving covered staff members beyond those specified in under (1), (2), and (3), or (4), (5), and (6) above may be brought forward through regular administrative channels but are not covered by this procedure.~~ **for term staff, or matters involving staff members not covered by this procedure (probationary, temporary and other term status issues) are not subject to this procedure, but can be addressed through Administrative Review provided in section _____.** University policies on human rights, sexual

harassment or consensual relationships also provide alternate complaint procedures available to all staff.

- (6) Disputes regarding whether an issue qualifies under the scope of this policy as defined above, will be subject to administrative review beginning with the Office of the Associate Vice President for Finance and University Services and Director of Human Resources, and concluding with the Reviewing Officer as defined in this procedure, as final and binding.

d. Rights of Staff Members.

- (1) No retaliatory action shall be taken against a staff member because he or she utilized these regulations or was a witness in a proceeding. ~~A staff member who requests a hearing under these regulations may spend a reasonable period of time during working hours, ordinarily not to exceed a total of eight hours, in preparing for the hearing.~~
- (2) ~~A Such covered~~ staff member shall be paid for the time so spent. Similarly, ~~the staff member has the right to attend the hearing, and if the hearing is during working hours, the right to be paid for the time so spent.~~ **who utilizes this procedure will be released without loss of pay for a reasonable amount of time, if needed during working hours, to attend the meetings provided under sections (f) and (g) of this procedure. In addition, the staff member may be released without loss of pay, not to exceed a total of eight hours, in preparing for the hearing provided under section (g) of this procedure. Release time for this purpose must be scheduled with the approval of the appropriate supervisor and shall not interfere with the individual employee's work responsibilities.** Denial of reasonable time to prepare for a grievance is grievable under paragraph c(2) of this policy.
- (23) ~~The staff member, at the staff member's own expense, may be represented by an adviser of his or her choosing in all proceedings provided for in these regulations, except legal counsel at Step One. Legal counsel may be present at Step One by mutual agreement. The adviser, if a staff member, shall have the same protections as those provided in paragraph d (1) to the person being advised.~~ **accompanied at any step of this procedure by a witness observer or support person. If a staff member, this person will be released from duty without loss of pay attend the meeting during scheduled work hours. Such release time shall be scheduled with their supervisor so as not to interfere with their normal work responsibilities.**

- (4) The staff member may be accompanied by legal counsel of his or her choosing in lieu of a witness observer or support person in all proceedings provided for in this procedure after Step One.
- (53) A letter of reprimand **discipline** issued more than two ~~(2)~~ **one (1)** years before the occurrence giving rise to the grievance is not available for use as evidence against the staff member in the grievance procedure unless that staff member has been subject to further disciplinary action subsequent to receipt of the letter **or unless the discipline reflects a repeated pattern of behavior.**
- (6) As provided by state law, a staff member may have access to his or her personnel file.

~~e. Limitations. A staff member may utilize the procedures established in this policy only on his or her own behalf, and may not utilize them:~~

- ~~(1) to question general salary scales, general salary adjustments, or the substance of University policies;~~
- ~~(2) to raise questions relating to the classification of his or her position; or~~
- ~~(3) to raise issues on behalf of persons similarly situated. However, if a staff member files a grievance raising the same issue as that raised in a grievance filed by another staff member, these grievances may be grouped for hearing by mutual consent of the parties (each grievant and each supervisor).~~

~~Issues excluded from the grievance procedure may be raised through administrative channels (department, dean or vice president) and/or through the Staff Council.~~

e.f. Time Periods.

- (1) Calendar days will be used in computing any period of time prescribed or allowed by this policy, and the day of the act or event from which the designated period of time begins to run shall not be included in the computation. For example, the day a grievant receives a response from an administrator will not be counted as part of the time period. The last day of the period so computed shall be included, unless general University **administrative** offices are not open on that day, in which event the period runs until the end of the next day on which general University **administrative** offices are open.
- (2) A staff member must **initiate a request for administrative review**

(see section _____) or file a grievance under this policy within **fifteen (15)** ~~twenty-one (21)~~ days of the staff member's discovery of the action or non-action giving rise to the grievance. **After that time, any request must reflect extenuating circumstances,** but in any event, the grievance must be filed no later than **twelve (12)** ~~eighteen~~ months from the date of the action or non-action of which the staff member complains. **Questions of timeliness will be addressed as those relative to the Scope of the Policy, as outlined in c (6) of this procedure.**

- (3) **At any time during the grievance process, the parties may agree in writing to mediate the dispute, through the University Mediation Service or other mutually agreeable resource. Such agreement shall suspend the deadlines for processing outlined in section (f) of this procedure for a period of thirty (30) days, or other mutually agreed upon period of time, in order to pursue a mediated settlement of the dispute. In the event the mediation is unsuccessful, the formal procedures will resume at the point at which they were suspended for mediation.**
- (43) If the grievant fails to act within the time period specified in this policy, the grievance shall be deemed to have been satisfied by the administrative response and the grievance may not be raised again.
- (5) **If the University fails to act within the time periods specified in this policy, the grievance shall be deemed denied and the grievant may pursue the grievance at the next step of these procedures.** ~~When this policy requires that some action in the grievance procedure be taken within a specified time period by a representative of the University and such action is not taken, the~~ time limit governing the grievant's next step shall run from the latest time the omitted action should have been taken.
- (64) Time limits may be waived in writing by mutual consent of the parties.

g.f. Pre-hearing Procedures.

- (1) **Step One.** A grievance must begin with a submission of a written request for a conference (**electronic or hard copy**) sent by the grieving staff member to the person to whom the staff member is immediately responsible. The request will ~~state in general~~ **terms describe** the matter about which the grievant seeks a remedy **consistent with the scope of the policy (c).** Within **ten (10)** ~~nine (9)~~ days of receipt of the written request, the immediate supervisor will confer with the grievant, and the parties will seek to find a

mutually satisfactory remedy to the grievance. If such a remedy is not found, the immediate supervisor will, within **seven (7)** ~~three (3)~~ days thereafter, give **a written** ~~an oral~~ response to the grievant.

- (2) Step Two. If the response at **Step One** fails to **resolve the matter** satisfy the grievant, within seven (7) days of the **Step One** oral response may begin Step Two by filing a written grievance **(electronic or hard copy)** with the executive officer (e.g., head, chair, or director) of the department in which the grievant is employed. **Step Two is waived if the person to whom the grievant is immediately responsible is also the executive officer of the department in which the grievant is employed.** The written grievance will state with reasonable particularity:

- (a) the events concerning which the grievant feels aggrieved;
- (b) the date or dates on which the events complained of occurred;
- ~~(c) the date of the oral response in Step One, if such a response was made, and the grievant's understanding of that oral response; and~~
- (cd) the remedy requested; and
- (d) **include a copy of the response from Step One.**

~~In preparing the statement required by this step of the grievance procedure, the staff member may have access to his or her personnel file. Step Two is waived if the person to whom the grievant is immediately responsible is also the executive officer of the department in which the grievant is employed. Within ten (10) days of receiving the written grievance, the executive officer of the University department in which the staff member is employed will respond in writing to the grievant, stating with reasonable particularity his or her understanding of the facts and of the oral response made, if either or both differ from the understanding of the grievant as stated in the written grievance. The written response also will include copies of any documents used by the executive officer in preparing the response state whether or not the requested remedy will be granted.~~

- (3) Step Three. **If the issue is not resolved at step 2** ~~If the grievant still feels aggrieved after receiving the written response called for in Step Two, the grievant, within seven (7) days of the receipt of that~~

response, will file a request for review (**electronic or hard copy**) with the head of the major administrative unit in which the grievant is employed, e.g., with the dean, vice president, or director (or designee), as appropriate. The request for review will be accompanied by a copy of all materials required to be submitted in Step Two plus the written response **from Step Two**, if any. ~~(Step Three is waived if the person to whom the staff member is immediately responsible is also the head of the major administrative unit.)~~ The head of the major administrative unit, or designee, will confer with the grievant within seven (7) days of the filing of the request for review. **At this time, both the grievant and the University will present all arguments and facts reasonably known at the time relevant to the grievance.** Following the conference, the person reviewing the grievance shall have ten (10) days in which to respond in writing to the grievant.

- gh. Request for Hearing. **If the issue is not resolved through** ~~A grievant who is dissatisfied with the response from the head of the administrative unit, or designee, and the grievant wishes~~ **an advisory arbitration hearing, she/he may request** ~~obtain one by filing, within ten (10) days of the receipt of such response, a request for hearing with the~~ **administrator (electronic or hard copy).** The request will be accompanied by copies of all documents developed while the grievant proceeded from Step One through Step Three. Upon receipt of the request, the administrator will take the necessary steps to convene a hearing.
- hi. ~~Arbitrator Hearing Officer~~ The administrator and the grievant will select the **arbitrator hearing officer**. They may choose **an arbitrator** from within the University or from outside. If they do not agree on **an arbitrator a hearing officer** within ten (10) days of the request for a hearing, the administrator will seek a list of ~~ten~~ **at least five** persons who are skilled in the resolution of disputes dealing with professional staff in institutions of higher education from **an appropriate dispute resolution service (e.g., American Arbitration Association, or Federal Mediation and Conciliation Service).** ~~The American Arbitration Association. The persons named may be from within the University or from outside. The parties will then select the~~ **arbitrator hearing officer** by alternately striking a single name until one name remains. The parties will decide who strikes first by flipping a coin. The grievant's department will pay the arbitrator's fee.
- ij. Hearing. The ~~arbitrator hearing officer~~ will conduct the **arbitration** hearing to assure that the grievant is accorded a full and fair hearing and all due process to which the grievant is entitled, according to the standards usually followed in arbitrations sanctioned by the American Arbitration Association.

- (1) Scheduling the Hearing. Within fourteen (14) days of the

appointment of the hearing officer or as soon as reasonably practicable, the administrator shall notify the parties in writing of the time, date, and place of the hearing. ~~The hearing officer shall notify the parties in writing of the time, date, and place of the hearing. The hearing shall be scheduled not earlier than ten (10) days nor more than twenty (20) days after notice has been given, subject to the availability of the hearing officer selected.~~

- (2) **Issue at hearing.** The issue(s) at the hearing will be restricted to the issue(s) presented by the parties at Step Three. No later than one week prior to the hearing, the representatives for the grievant and the University shall meet to review to exchange all evidence relevant to the grievance that is available at that time through the exercise of reasonable diligence, and a list of potential witnesses. If not presented at the pre-hearing exchange, no additional argument or evidence shall be presented at hearing, unless the presenting party can prove that such information was not reasonably known prior to the hearing through the exercise of reasonable diligence.
- (32) **Record to be Kept.** Any party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record. If such stenographic record is agreed by the parties to be, or in appropriate cases determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other party for inspection, at a time and place determined by the arbitrator. If no stenographic record is kept, a tape recording shall be made of the hearing, if requested by either of the parties, except that on order of the hearing officer, procedural matters may be discussed off the record. After the hearing has been completed, the tapes and all documents shall be turned over by the hearing officer to the administrator, who shall keep them. The tapes and documents will be available only to both parties and the reviewing officer. After all appeals related to the grievance have been completed, the administrator shall **retain** ~~file~~ the record and documents in the University Archives-Human Resources Office for **an appropriate period of time, generally not less than five (5) years.** The material will continue its status as **personnel** ~~personal~~ information in a confidential ~~personnel~~ record and will be available only to the parties.
- (43) **Burden of Proof.**
 - (a) In cases in which a staff member holding career status has

appealed a disciplinary action **under c(3) or termination under c(4)** based on lack of satisfactory performance or University-related misconduct, the University shall have the burden of proving **by a preponderance of the evidence** that it had just cause to take the action. The University will present evidence first.

- (b) **In all other claims,** ~~Except in cases in which a staff member holding career status has appealed a disciplinary action based on lack of satisfactory performance or University-related misconduct (as defined in subparagraph c(4),~~ the grievant shall have the burden of proving that the action or non-action complained of is improper under one or more of the grounds established in paragraphs **c (1) or (2)** e of this policy. The grievant will present evidence first.

- (54) Hearing Officer's Written Report. The hearing officer's written report shall be submitted to the reviewing officer as soon as reasonably possible, but not later than **thirty (30)** ~~sixty (60)~~ days after the **presentation of closing arguments** ~~end of the hearing~~. The report shall be confidential unless the parties mutually agree otherwise. The report shall include findings of fact, conclusions drawn from such findings, and the recommended action, if any. The reviewing officer shall distribute the report to the parties.

j.k Reviewing Officer's Review (See also III-31).

- (1) Review. The hearing officer's report and recommendations and the record made in the case will be forwarded to the reviewing officer for review. There will be no oral argument before the reviewing officer, but either party may submit a brief in support of the party's position. Such briefs ~~shall will~~ be submitted to the reviewing officer and the other party within five (5) days of the case being referred to the reviewing officer. The other party shall have five (5) days to submit a response brief. If a response brief is submitted, the party who first submitted a brief will have five (5) days to submit a rebuttal brief.
- (2) Decision. After reviewing the report, recommendations, briefs (if any), and the record if deemed necessary, the reviewing officer will determine what administrative action, if any, shall be taken. In making a decision, the reviewing officer will give great weight to the recommendations made by the hearing officer and will not reverse the hearing officer's decision unless 1) the decision was unsupported by substantial

evidence in the record made before the administrative hearing officer when that record is viewed as a whole; 2) the decision as a whole was unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion; or 3) the procedures were not properly followed. The reviewing officer's written decision will constitute final institutional action, subject only to a decision by the Board of Regents to grant the staff member's request for review. (See III-31.)

- (3) Within thirty (30) days following the reviewing officer's decision, the grievant may contact the reviewing officer if the decision has not been fully implemented or if retaliation has taken place. Subsequent retaliation may be treated as a separate grievance.